

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

**BERNARD KUCINSKI et al.**

Serial No. **10/765,749**

Filing Date: **1/27/2004**

For: **METHOD FOR SCORING AND  
DELIVERING TO A READER TEST  
ANSWER IMAGES FOR  
OPEN-ENDED QUESTIONS**

Examiner: **Joe H. Cheng**

Art Unit: **3714**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY BRIEF PURSUANT TO 37 CFR §41.41(a)(1)**

Pursuant to 37 CFR §41.41(a)(1), and to the issuance of an Examiner's Answer on May 16, 2007, Applicant/Appellant hereby submits to the Board of Patent Appeals and Interferences a Reply Brief addressing same. Previously made arguments will not be reproduced here, and are intended to stand.

**I. Grouping of Claims**

The claims of the case are grouped as follows for the subsequent discussion, which is the same as the claim grouping presented in the Appeal Brief: Group I, Claims 1-6, 8, 13, 14, 17-23, and 25; Group II, Claims 7 and 24; Group III, Claim 9; Group IV, Claims 15, and 16; Group V, Claim 10; Group VI, Claim 11; Group VII, Claim 12.

II. Reply to the Examiner's Response to Argument

1. Group I

Claims 1-6, 8, 13, 14, 17-23, and 25 have been rejected under 35 USC §102(e) as being anticipated by Poor (US 5,672,060).

This rejection is respectfully traversed. Independent Claims 1 and 17 will be discussed first. The Examiner states that he "considers the answer space to correlate to the computer screen in light of Col. 9:6-12" of Poor '060. Respectfully, this is clearly not what is intended by Poor. Poor is clear in defining the "answer space" as the physical location of a written answer, for example, in FIG. 5, and in the Specification at col. 8, lines 2-3: "FIG. 5 shows a completed handwritten essay 22 in Assessment Area 7'." Poor carefully distinguishes between the physical answer space and the "captured image", which is that which is scanned into a computer record. It is the "image" to which Poor refers in the cited portion of the Specification: "the capture process should be set up so that the full width of the assessment material's *image* can be viewed on the screen at one time. If the length of the *image* exceeds the vertical display capability of the computer monitor, a method is desirably included to smoothly 'scroll' the *image* up and down on the screen so that the entire *image* can be easily viewed by the scorer." [col. 9, lines 6-12, *emph. added*]

The "image" of Poor is not what is being recited in Claims 1 and 17, wherein the portion being viewed can include "a sector of the answer page *outside the answer space*" in Claim 1 and "a second portion of the answer page at least partially outside the first portion" in Claim 17. Thus it is this added sector of the physical page that is now viewable by the scorer, which is not contemplated or taught by Poor '060.

As stated in the Appeal Brief, it is respectfully asserted that the Examiner has not met his burden of demonstrating the presence of "every aspect of the claimed invention", as required by 35 USC §102(e) and that, therefore, there is no anticipation of Claims 1 and 17. Further, therefore, there can be no anticipation of Claims 2-8, 13, 14, and 18-25, dependent from Claims 1 and 17, by Poor '060.

2. Group II

Claims 7 and 24 have been rejected under 35 USC §102(e) as being anticipated by Poor (US 5,672,060).

This rejection is respectfully traversed.

Claim 7 recites the step of, "if the entire answer page does not encompass a complete answer, viewing a first visual image of a second answer page to search for a complete answer." Again, the Examiner considers, on page 5 of the Examiner's Answer, that "[t]he part of the screen in Poor wherein the user views the completion of answer by scrolling in Poor wherein the user views the completion of answer by scrolling in Poor is considered by Examiner to be a second answer page." However, in the Poor '060 Specification, there is no teaching or suggestion to capture a visual image outside the expected answer sector; there is even less of a suggestion in Poor '060 to proceed yet further onto another visually imaged answer page entirely to "search for a complete answer."

Claim 24 recites the step of, "if the answer page does not encompass a complete answer, repeating the retrieving, formatting, transmitting, and permitting steps on a second answer page." Similarly as for Claim 7, as Poor '060 neither teaches nor suggests

capturing and providing a visual image to a scorer that resides outside an answer sector, there is no teaching or suggestion to image and then make available to the scorer a formatted visual image of a second answer page for scoring.

Therefore, it is respectfully believed that Claims 7 and 24 are not anticipated by Poor '060, and that Claims 7 and 24 patentably define thereover.

### 3. Group III

Claim 9 has been rejected under 35 USC §103(a) as being unpatentable over Poor '060 in view of Clark et al. (US 5,321,611).

This rejection is respectfully traversed. Claim 9 recites the additional step of: "if a question occurs during the scoring step, electronically transmitting a query to a supervisor." The Examiner relies on Clark '611 to supply this step. However, first, Clark '611 does not supply this step. The cited text of Clark reads: "If the first two resolvers scores do not need to agree, then the *system* preferably transmits the test item to a third resolver to 'cure' the discrepancy in the first two scores." [col. 7, lines 38-41] Therefore, there is in fact no teaching to "[transmit] a *query* to a supervisor" as recited in present Claim 9; rather, the *test item* is transmitted to the third resolver, not a query.

Thus, as the element recited in Claim 9 is taught by neither Poor nor Clark, Claim 9 patentably defines over the cited art.

### 4. Group IV

Claims 15 and 16 have been rejected under 35 USC §103(a) as being unpatentable over Poor '060 in view of Clark et al. (US 5,321,611).

This rejection is respectfully traversed. Claim 15 recites the additional steps of "calculating a time span between the first visual image viewing step and the scoring step, and comparing the time span with a target scoring time." Claim 16 recites the additional step of "calculating a reader efficiency from the time-span comparing step."

The Examiner relies on Clark '611 to supply these steps, which are admitted as not being taught by Poor '060. Since, there is no "second visual image" taught by either Poor or Clark, the additional steps as recited in Claims 15 and 16 serve to further define thereover.

Claims 15 and 16 are therefore believed free of the cited art.

5. Group V

Claim 10 has been rejected under 35 USC § 103(a) as being unpatentable over Poor '060 in view of Walker (US 6,093,026).

This rejection is respectfully traversed. Claim 10 recites that "the answer comprises an answer in verbal form." As stated in the Appeal Brief, the word "verbal" can mean either written or spoken words. There is no teaching in the present Specification to take audio input; rather, the entire invention is directed to the scanning of written material, and, as claim language must be read in light of the Specification, it is clear that written responses are the intended elements herein.

Therefore, Claim 10 is believed free of the cited art.

6. Group VI

Claim 11 has been rejected under 35 USC §103(a) as being unpatentable over Poor '060 in view of Martinez (US 5,211,564).

This rejection is respectfully traversed. Claim 11 recites that "the answer comprises a geometric diagram." Martinez '564 in the cited portion refers to the use by the examinee of a geometric tool on a computer screen to provide an answer to a test item. The present invention recites that the answer provided by the examinee is a geometric diagram, which is scanned and presented to a human scorer as an image. Therefore, the elements of Poor and Martinez do not supply the recitation of Claim 11 as dependent from Claim 1.

Thus Claim 11 patentably defines over the cited art.

7. Group VII

Claim 12 has been rejected under 35 USC §103(a) as being unpatentable over Poor '060/Martinez in view of Bier et al. (US 5,581,670).

This rejection is respectfully traversed. Claim 12, which is dependent from Claim 11, recites the step of "accessing an electronically manipulable display of a geometric tool for assessing the geometric diagram." There is no teaching in Martinez to supply a *human scorer* with a geometric tool for making measurements of a visual image of an answer supplied by the examinee. Bier '670 is not directed to scoring assessments. Therefore, the recited step is neither taught nor suggested by the cited art, alone or taken in combination.

Thus Claim 12 patentably distinguishes over the cited art.

III. Summary and Conclusion

Appellant/Applicant has presented additional arguments against those presented in the Examiner's Answer.

It is thus respectfully requested that the decision of the Examiner be reversed.

Respectfully submitted,



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